

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - December 16, 2021

EVENT DATE: 12/17/2021

EVENT TIME: 10:30:00 AM

DEPT.: C-68

JUDICIAL OFFICER:Richard S. Whitney

CASE NO.: 37-2019-00015016-CU-BT-CTL

CASE TITLE: BIRD RIDES INC VS TALON AUTO ADJUSTERS [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Business Tort

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED:

TENTATIVE RULING: BIRD RIDES INC.'S APPLICATION FOR WRIT OF POSSESSION is GRANTED.

Plaintiff Bird Rides, Inc. ("Plaintiff") seek to obtain possession of "approximately 6,000 Bird scooters" from Defendants Talon Auto, Inc., John Heinkel, Scooter Removal, LLC and Daniel Borelli ("Defendants"). Defendants assert they impounded scooters in substantial compliance with Vehicle Code section 22658, while Plaintiff asserts the impounding of scooters were improper and any lien are void under Civil Code sections 3068.1 and 3072. Defendants also argue they were barred from completing lien sales pursuant to Civil Code section 3072 because the scooters are not subject to registration and licensing requirements under Vehicle Code section 21224. (Veh. Code, § 21224(a) "A person operating a motorized scooter is not subject to the provisions of this code relating to financial responsibility, registration, and license plate requirements, and, for those purposes, a motorized scooter is not a motor vehicle."

Under Civil Code section 3068.1,

Every person has a lien dependent upon possession for the compensation to which the person is legally entitled for towing, storage, or labor associated with recovery or load salvage of any vehicle subject to registration that has been authorized to be removed by a public agency, a private property owner pursuant to Section 22658 of the Vehicle Code, or a lessee, operator, or registered owner of the vehicle. The lien is deemed to arise on the date of possession of the vehicle.

(Civ. Code, § 3068.1(a)(1).)

If the vehicle has been determined to have a value not exceeding four thousand dollars (\$4,000), the lien shall be satisfied pursuant to Section 3072. Lien sale proceedings pursuant to Section 3072 shall commence within 15 days of the date the lien arises. No storage shall accrue beyond the 15-day period unless lien sale proceedings pursuant to Section 3072 have commenced.

(Civ. Code, § 3068.1(b).)

Under Civil Code section 3072,

the lienholder shall apply to the department for the names and addresses of the registered and legal

owners of record. The request shall include a description of the vehicle, including make, year, model, identification number, license number, and state of registration. If the vehicle identification number is not available, the Department of Motor Vehicles shall request an inspection of the vehicle by a peace officer, licensed vehicle verifier, or departmental employee before releasing the names and addresses of the registered and legal owners and interested parties.

(Civ. Code, § 3072(a).) Once the lienholder receives the names and addresses of owners, the lienholder must provide the owner with a chance to challenge the lien. (Civ. Code, § 3072.) "Any lien sale pursuant to this section shall be void if the lienholder does not comply with this chapter." (Civ. Code, § 3072(j).)

An application for writ of possession must include, *inter alia*, "[a] showing that the property is wrongfully detained by the defendant, of the manner in which the defendant came into possession of the property, and, according to the best knowledge, information, and belief of the plaintiff, of the reason for the detention." (Code Civ. Proc., § 512.010(b)(2).) The threshold question before this Court is whether Defendants complied with Vehicle Code section 22658 such that they obtained a lien against the scooters.

To support Plaintiff's application, Plaintiff provides the declaration of its counsel Jeffrey Landis, which references the verified complaint. Mr. Landis asserts Defendants violated Vehicle Code section 22658(m) because Defendants failed to timely notify law enforcement of their impounding of scooters, which is admitted in discovery responses.

- (1) A towing company that removes a vehicle from private property under this section shall notify the local law enforcement agency of that tow after the vehicle is removed from the private property and is in transit.
- (2) A towing company is guilty of a misdemeanor if the towing company fails to provide the notification required under paragraph (1) within 60 minutes after the vehicle is removed from the private property and is in transit or 15 minutes after arriving at the storage facility, whichever time is less.
- (3) A towing company that does not provide the notification under paragraph (1) within 30 minutes after the vehicle is removed from the private property and is in transit is civilly liable to the registered owner of the vehicle, or the person who tenders the fees, for three times the amount of the towing and storage charges.
- (4) If notification is impracticable, the times for notification, as required pursuant to paragraphs (2) and (3), shall be tolled for the time period that notification is impracticable. This paragraph is an affirmative defense.

(Veh. Code, § 22658(m).)

Defendants do not deny that they did not strictly comply with Vehicle Code section 22658(m), but they argue they substantially complied. "Substantial compliance, as the phrase is used in the decisions, means *actual* compliance in respect to the substance essential to every reasonable objective of the statute." (*Southern Pac. Transportation Co. v. State Bd. of Equalization* (1985) 175 Cal.App.3d 438, 442 [Citation omitted, emphasis in original].) Defendants argue Scooter Removal called the San Diego Police Department and the La Mesa Police Department to inform the agencies of the tow, but Scooter Removal was informed the departments could not take the information because the scooters do not have identification or registration numbers. Notwithstanding, Scooter Removal would call at least once a month to check if they could comply. Scooter Removal also asserts it sends monthly affidavits to the police departments listing every vehicle it has in its possession. The Court agrees with Plaintiff – even if the act was futile, there is nothing to indicate Defendants could not comply. Defendants were responsible with providing the police with notice, not with ensuring the police did anything specific with the information. While the Court believes the purpose of the notification requirement is to ultimately provide the owner with notice of the impounding and reporting to the police was not furthering that objective, Defendants did not otherwise make proper efforts to achieve the objective – providing notice to the owner.

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If Defendants truly wanted to comply with the spirit and objective of Vehicle Code section 22658, they would have immediately notified Plaintiff each time they impounded a scooter. Tow truck operators, "if the operator knows or is able to ascertain" who is the registered and legal owner, are required to "immediately give, or cause to be given, notice in writing to the registered and legal owner of the fact of the removal." (Veh. Code, § 22658(b)) The immediate notification would have made it possible for Plaintiff to challenge the legitimacy of the impounding. While Defendants assert that it could not give "notice in writing to the registered and legal owner of the fact of the removal" because it is possible for others besides Plaintiff to own a BIRD-labelled scooters, Defendants acknowledge the scooters are labeled "BIRD" and they have a QR code on the scooters. (Veh. Code, § 22658(b).) Even if Defendants had doubts as to who owned the scooters, Defendants were not justified in waiting to provide Plaintiff with the QR codes of the scooters they impounded long after the impounding occurred when Defendants admit their practice was to take a photo of the scooter's general location and of the QR code. Thus, while the scooters were not "registered," Defendants were capable of providing Plaintiff with notice immediately because they knew Plaintiff used the QR codes.

Further, Defendants assert that they did not strictly comply with Vehicle Code section 22658(n) because it initially does the impounding at a facility within 10 miles of where the scooter was removed, but moves them to a facility in Spring Valley because the other facility is "incapable of storing the quantity of scooters which need to be removed." "A vehicle removed from private property pursuant to this section shall be stored in a facility that meets all of the following requirements: (1)(A) Is located within a 10-mile radius of the property from where the vehicle was removed...." (Veh. Code, § 22658(n).) Defendants have not actually complied with a substantive provision and Defendants do not provide any legitimate justification for its failure to comply. Further, Plaintiff provides evidence the "facility" is a storage garage that is not staffed with representatives and it is closed and locked. The impounding facility is supposed to "[r]emain[] open during normal business hours and release[] vehicles after normal business hours." (Veh. Code, § 22658(n).) Plaintiff has provided evidence Defendants did not comply with the requirements of Vehicle Code section 22658(n), which the Court finds are more than mere technical requirements.

It is also undisputed that Defendants did not have general tow authorizations prior to July 2019. Defendants do not contradict the declaration of Ting Ting Guo, who states "[b]eginning in the summer of 2018, Defendants began impounding Bird scooters" and that "[a]pproximately 6,000 Bird scooters have been impounded since November 2018 and remain in Defendants' possession." "General authorization to remove or commence removal of a vehicle at the towing company's discretion shall not be delegated to a towing company or its affiliates except in the case of a vehicle unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or in a manner which interferes with an entrance to, or exit from, the private property." (Veh. Code, § 22658(l)(E)(i).) Thus, it is undisputed that at least some of the impounded scooters were improperly impounded without general tow authorizations prior to July 2019.

While Defendants also argue they were barred from completing the lien sale process, the Court finds Plaintiff has sufficiently demonstrated Defendants failed to comply with Vehicle Code section 22658, such that Defendants do not have a lien on the scooters. Defendants argue they could not comply with Civil Code section 3072 because the DMV does not have records for the scooters as they are not registered. The Court declines to rule whether Defendants were required to comply with Civil Code section 3072 because Plaintiff has sufficiently demonstrated Defendants did not properly obtain a lien on the scooters pursuant to Civil Code section 3068.1 and Vehicle Code section 22658. However, the Court notes that Defendants could have complied with the spirit and objective of Civil Code section 3072 by immediately providing Plaintiff with notice and an opportunity to challenge the impounding using the QR codes Defendants photographed. Defendants could have provided Plaintiff with the information required under Civil Code section 3072.

Finally, Defendants assert unclean hands by Plaintiff. "One who comes into equity must come with clean hands.... Unconscientious conduct in the transaction may give rise to the defense." (*Estates of Collins & Flowers* (2012) 205 Cal.App.4th 1238, 1247–1248 [Citation omitted].) Defendants' argument depends on the assumption Plaintiff was required to pay towing and storage fees. As the Court finds Plaintiff has

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sufficiently demonstrated Defendants did not properly acquire liens pursuant to Civil Code section 3068.1 and Vehicle Code section 22658, Defendants' argument fails.

The above analysis is for purposes of determining whether Plaintiff has established the probable validity of claim as required by CCP section 512.060. The Court's findings do not preclude the parties from presenting more evidence later to demonstrate liens were properly obtained.

The writ for possession of Plaintiff's scooters with a QR code, which amounts to approximately 6,000 scooters, is granted. Given Plaintiff has demonstrated Defendants did not properly obtain liens on the scooters, the Court "finds that the defendant[s] ha[ve] no interest in the property" such that the Court must "waive the requirement of the plaintiff's undertaking and shall include in the order for issuance of the writ the amount of the defendant[s'] undertaking sufficient to satisfy the requirements of subdivision (b) of Section 515.020." (Code Civ. Proc., § 515.010(b).) Under CCP section 515.020, a defendant "may prevent the plaintiff from taking possession of property pursuant to a writ of possession or regain possession of property so taken by filing with the court in which the action was brought an undertaking in an amount equal to the amount of the plaintiff's undertaking...." (Code Civ. Proc., § 515.020(a).)

The undertaking shall state that, if the plaintiff recovers judgment on the action, the defendant shall pay all costs awarded to the plaintiff and all damages that the plaintiff may sustain by reason of the loss of possession of the property. The damages recoverable by the plaintiff pursuant to this section shall include all damages proximately caused by the plaintiff's failure to gain or retain possession.

(Code Civ. Proc., § 515.020(b).) Plaintiff has not provided any estimate as to the costs and damages Plaintiff would "sustain by reason of the loss of possession of the property." The Court instructs Plaintiff to provide the Court with an estimate as to such estimated costs and damages so that an appropriate undertaking amount can be set for Defendants to post in the event they choose to post an undertaking to retain possession of the scooters.